



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF N-R-

DATE: AUG. 26, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an environmental science researcher, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Nebraska Service Center, denied the petition. The Director found that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of a job offer would be in the national interest.

The matter is now before us on appeal. In his appeal, the Petitioner argues that he satisfies the national interest waiver requirements.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate his or her qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . the Attorney General¹ may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Department of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

II. ANALYSIS

The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of

¹ Pursuant to section 1517 of the Homeland Security Act of 2002 (“HSA”), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA “shall be deemed to refer to the Secretary” of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

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the job offer requirement, and thus a labor certification, is in the national interest. The Petitioner has established that his work in the field of environmental science and bio-food security is in an area of substantial intrinsic merit and that the proposed benefits of his research would be national in scope. It remains, then, to determine whether the Petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

At the time of filing, the Petitioner indicated that he was completing his Ph.D. at [REDACTED] in Australia, focused on bio-food security. The Petitioner explained that his research pertains to food security including environmental, agricultural, and development issues that are closely interrelated and that his work is in the national interest of the United States. The Director determined that the Petitioner's impact and influence on his field did not satisfy the third prong of the *NYSDOT* national interest analysis.

In addition to documentation of his published and presented work, research projects and their funding, and professional memberships, the Petitioner submitted various reference letters discussing his work in the field. With respect to the Petitioner's research concerning surface and subsurface water resources on the [REDACTED] campus, [REDACTED] associate dean and professor of natural and applied science at the [REDACTED] noted that the Petitioner's thesis work involving water resources was used to educate and train both undergraduate and graduate students in water resource investigation techniques. [REDACTED] explained that the Petitioner's work, "successfully bridges the gap between data collection and research and its application to curriculum enrichment." [REDACTED] further stated that the Petitioner has "made significant contributions in the related areas of water quality and waste management," and he believes that "[the Petitioner] will be able to make further significant contributions to such efforts." [REDACTED] did not elaborate on how the Petitioner's research specifically contributed to water resource investigation techniques.

Although the Petitioner's environmental research has value, any research must be original and likely to present some benefit if it is to receive funding and attention from the scientific community. In order for a university, publisher, or grantor to accept any research for graduation, publication or funding, the research must offer new and useful information to the pool of knowledge. [REDACTED] did not provide specific examples of how the Petitioner's work has affected water resource practices in various communities, what specific techniques were developed by the Petitioner, or how his work has otherwise influenced the field as a whole.

Similarly, [REDACTED] industrial recycling specialist, at the [REDACTED] affirmed that the Petitioner was actively involved in his research related to beneficial reuse opportunities for high volume industrial byproducts such as paper mill sludge, foundry sand, and utility ash. [REDACTED] further mentioned that the Petitioner "demonstrated strong technical and computer skills, as well as the ability to communicate with engineering and technical personnel at many companies in Wisconsin." [REDACTED] also wrote that "a technical paper on the results of this project was presented at an international conference held in [REDACTED]" Similarly, [REDACTED] professor, natural and applied sciences, [REDACTED] commented:

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[The Petitioner] also gained significant knowledge in the field of solid waste management and recycling while working for two years in the [REDACTED] [REDACTED] located on our campus. While there he helped develop strategies for the beneficial reuse of high volume industrial by-products generated in Wisconsin. He also used Geographic Information Systems (GIS) as a tool in analyzing solid waste management infrastructures. This work resulted in a joint paper with [REDACTED] which was presented at an international conference in [REDACTED] in [REDACTED] 1998.

While [REDACTED] and [REDACTED] both stated that the Petitioner's work was "presented" at an international conference in [REDACTED] they did not indicate how the Petitioner's work specifically affected any communities' solid waste management infrastructures or how it has otherwise advanced the field of waste management as a whole. In addition, the Petitioner did not submit any corroborating documentation, apart from the invitation to present his research, explaining the "significant impact" of the Petitioner's work. There is no presumption that every published article or conference presentation demonstrates influence on the field as a whole; rather, the Petitioner must document the actual impact of his article or presentation. In this instance, there is no evidence showing that once disseminated through publication or presentation, the Petitioner's work related to solid waste management or subsurface water garnered a significant number of independent citations or that his findings have otherwise influenced the field as a whole.

[REDACTED] city of [REDACTED] department of city development, noted that, in 1995, the Petitioner was a lead project assistant for the [REDACTED] which served approximately 50 inner city young people ages 14-22. [REDACTED] indicated that the Petitioner "assisted in all program elements, including youth supervision, the development of work plans and the design of projects, and general environmental education." He further stated:

[The Petitioner] has developed a unique and valuable set of skills for participating in both scientific and commercial efforts that incorporate environmental studies, having combined GIS and other computer expertise, understanding of and hands-on familiarity with field work, and understanding of the general economic and specific markets associated with the recycling and sale of industrial byproducts, and relevant U.S. and State of Wisconsin administrative and regulatory codes.

[REDACTED] does not explain how the Petitioner's work with this program resulted in an impact on the field beyond the summer internship described. A statement that a petitioner possesses useful skills or experience relates to whether similarly-trained workers are available in the United States and falls under the jurisdiction of the U.S. Department of Labor through the labor certification process. *See NYSDOT*, 22 I&N Dec. at 221.

The record also contains copies of invitations from various conference organizers. [REDACTED]

[REDACTED] professor and acting director of the [REDACTED]

at

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invited the Petitioner to be a presenter at the Symposium on the organizer of the in 2008; colloquium in South Korea, in 2007, invited the Petitioner to present his research at the conference; and the invited the Petitioner to present his research at the 2014 meeting at

senior lecturer at described the Petitioner's research related to social inquiry regarding food security, and examining sustainability and the resilience of food systems through reconnecting culture farming and environment. commented that the Petitioner "brings a solid transdisciplinary context of research grounded in contextual learning to his research study." She goes on to write that he has contributed internationally through presentation of his research in international forums.

head of the office in Nepal, submitted a letter explaining that "as a key resource person in many internal and international deliberations, especially in relation to the environment, food security, and international aid development, [the Petitioner] has gained inter-subjective perspectives." He further stated that the Petitioner's "core expertise is a mix of social and natural science methodologies that has a definitive contribution to policy development and embody social and natural science 'Praxis' contextualized and reflective of the phenomenon." also described several seminars and conferences in which the Petitioner presented research, including the in Pakistan; a seminar entitled jointly sponsored by the and the in China; and several conferences in Nepal that were sponsored by

associate professor, stated that she served on the former board of trustees of the a non-governmental organization (NGO) based in Nepal when [the Petitioner] was the executive chairperson of the organization. stated that, under the Petitioner's leadership, the organization received institutional and financial support from several national and international organizations such as the and the The Petitioner did not provide any evidence of this funding to substantiate statements. Regardless, there is no documentation indicating that the Petitioner's work for the has influenced the field as a whole.

Included with the response to the Director's request for evidence (RFE), provided a second letter that stated:

After leaving [the Petitioner] spent considerable time as the Executive Chairperson of the in Nepal. In this position, [the Petitioner] developed forums and mechanisms

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for coordination and public discussion with groups on policy and other relevant environmental topics. He also identified local, regional and global opportunities and partners and contributed to the development of knowledge on sustainability. It should be noted that [the Petitioner] also continued to publish articles and proceedings, while also making a number of technical presentations.

While not identifying the articles, proceedings or technical presentations that he was referring to, [REDACTED] explained that the Petitioner is “collaborating with [REDACTED] on blending Grounded Theory and Systems Thinking tools,” which “presents a novel contribution in addressing sustainability and development in both developed and developing countries.” [REDACTED] professor emeritus, [REDACTED] also submitted a letter in support of this petition. [REDACTED] stated that, “[the Petitioner’s] methodology that uniquely blends Grounded Theory and Systems Dynamics is very promising and offers great potential for generating relevant insights about real world problems and in fact very enduring for US while we grapple with environmental and social issues in a local and national level.” [REDACTED] expectation regarding the possible future impact of the Petitioner’s work, however, is not evidence of his eligibility at the time of filing. Possible future impact is not sufficient to demonstrate that the Petitioner has a past history of demonstrable achievement that has impacted the field. Furthermore, a petitioner must establish eligibility at the time of filing and must continue to be eligible for the benefit through adjudication. 8 C.F.R. § 103.2(b)(1). A petition may not be approved at a future date after the Petitioner or Beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm’r 1971).

Finally, [REDACTED] assistant professor, [REDACTED] in [REDACTED] Nepal; [REDACTED] assistant professor of law at [REDACTED] in Nepal; and, [REDACTED] associate professor department of engineering science and engineering, [REDACTED] in Nepal, submitted letters indicating that the book, [REDACTED] which was edited by the Petitioner, is currently used as a required text book for their respective graduate courses. [REDACTED] reader at [REDACTED] in [REDACTED] Nepal, also provided a letter stating that the book is “being widely cited by my master thesis student and myself.” As the Petitioner was the editor of this text, and not the author, there is no indication that his work influenced the field of water resources security and sustainability at a level sufficient to waive the job offer requirement.

Overall, the Petitioner submitted letters of varying probative value. We have addressed the specific contentions above. Generalized conclusory statements that do not identify specific contributions or their impact in the field have little probative value. *See 1756, Inc. v. U.S. Att’y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). In addition, uncorroborated statements are insufficient. *See Visinscaia v. Beers*, 4 F.Supp.3d 126, 134-35 (D.D.C. 2013) (upholding USCIS’ decision to give limited weight to uncorroborated assertions from practitioners in the field); *See also Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988) (holding that an agency “may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony,” but is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought and “is not required to accept or may give less weight” to evidence that is “in any way questionable”). The

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submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner's eligibility. *Id.* See also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). As the submitted reference letters did not establish that the Petitioner's work has influenced the field as a whole, they do not demonstrate his eligibility for the national interest waiver. The individuals who provided letters of support are limited to collaborators and advisors of the Petitioner, and their statements do not reflect the Petitioner's influence beyond his immediate colleagues.

The Petitioner also submitted copies of his master's thesis and two conference presentations. While the Petitioner stated that he submitted a copy of the [REDACTED] report, it is not contained in the record. The Petitioner has not established that his research has been independently cited or presented other evidence indicative of its impact on the field as a whole. A substantial number of favorable independent citations for an article is one indicator that other researchers are familiar with the work and have been influenced by it. The Petitioner must submit documentary evidence showing that his work has affected water management or food security protocols, or has otherwise influenced the field as a whole.

With respect to the documentation reflecting that the Petitioner has presented his findings at various conferences, we note that many professional fields regularly hold meetings and conferences to present new work, discuss new findings, and to network with other professionals. Professional associations, educational institutions, healthcare organizations, employers, and government agencies promote and sponsor these meetings and conferences. Although presentation of the Petitioner's work demonstrates that he shared his original findings with others, there is no documentary evidence showing, for instance, frequent independent citation of his work, or that his findings have otherwise influenced the field of environmental science at a level sufficient to waive the job offer requirement. The Petitioner must also submit evidence that the research, once disseminated, impacted the field beyond a general contribution to the state of knowledge.

On appeal, the Petitioner lists his various research accomplishments, but as indicated above, presented little documentary evidence showing that his work has affected the field of environmental science as a whole and many of the recommenders' statements have not been corroborated by evidence in the record. For example, the appellate submission includes a statement that the Petitioner

[w]orked in a policy solicitation and research implication internationally with several [REDACTED] former [REDACTED] and [REDACTED] Assistant Administrator and a [REDACTED] for [REDACTED] and [REDACTED] of Taiwan.

The Petitioner, however, did not submit any corroborating documentation from the aforementioned organizations reflecting the new policy guidelines or indicating that the organizations noted

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implemented the Petitioner's work. USCIS need not rely on unsubstantiated statements. *See 1756, Inc.*, 745 F. Supp. at 15.

The appellate submission also contends that the Petitioner's research has been used by the [REDACTED] universities teachers, local county and municipal offices and national policy forums, and that it will be "highly valuable" to the [REDACTED]. However, the Petitioner has not explained how these agencies or governmental entities have used his work or how [REDACTED] will benefit from the Petitioner's research. General statements regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot by themselves establish that an individual benefits the national interest by virtue of engaging in the field. *Id.* at 217. Such information addresses only the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test.

We do not dispute the importance of having skilled environmental scientists working in our nation's government and non-government institutions. At issue in this matter, however, is whether the Petitioner's individual contributions in the field are of such significance that he merits the special benefit of a national interest waiver. On appeal, the Petitioner contends that his unique skills, knowledge, and environmental science and food security expertise are not amenable to the labor certification process. The inapplicability or unavailability of a labor certification, however, cannot be viewed as sufficient cause for a national interest waiver; a petitioner still must demonstrate that he will serve the national interest to a substantially greater degree than do others in his field. *Id.* at 218, n.5.

The existing *NYSDOT* guidelines require the Petitioner to establish that he will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications, and he has not done so in this matter. *See NYSDOT*, 22 I&N Dec. at 217-18. With regard to following the guidelines set forth in *NYSDOT*, USCIS, by law, does not have the discretion to ignore binding precedent. *See* 8 C.F.R. § 103.3(c).

In the present matter, the record does not show that the Petitioner's past research has influenced the field of environmental science or food security as a whole. For example, there is no documentary evidence indicating that his published and presented findings have been widely implemented in the field, or that his work has otherwise affected the field as a whole.

III. CONCLUSION

Considering the letters and other evidence in the aggregate, the record does not establish that the Petitioner's work has influenced the field as a whole or that he will otherwise serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. The Petitioner has not shown that his past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification he seeks.

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. Although a petitioner need not demonstrate notoriety on the scale of national acclaim, he must have “a past history of demonstrable achievement with some degree of influence on the field as a whole.” *Id.* at 219, n.6. On the basis of the evidence submitted, the Petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. It is the Petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of N-R-*, ID# 17826 (AAO Aug. 26, 2016)